LANDFILL METHANE OUTREACH PROGRAM

Summary - Energy Policy Act of 2005

On August 8, 2005, the Energy Policy Act of 2005 was signed into law. This legislation:

- Includes provisions for renewed and expanded tax credits for landfill gas
- Provides bond financing, tax incentives, grants, and loan guarantees
- Extends renewable energy production incentives to landfill gas

To view the full text of the Act, visit the Committee on Energy and Commerce Web site at http://energycommerce.house.gov. Citations are provided for locating the sections of the Act and corresponding sections of the U.S. Code described below.

Renewable Electricity Production Credit

The Section 45 Renewable Electricity Production Credit is a per kilowatt-hour federal tax credit for electricity generated by qualified energy resources, including landfill gas. The credit amount is 0.9 cents ($0.009)/kWh for electricity produced from landfill gas and sold by the taxpayer.

Under the American Jobs Creation Act of 2004, facilities producing electricity from landfill gas had to be placed in service by the end of 2005 to qualify for the tax credit. The new law extends for two years (through December 31, 2007) the placed-in-service window [26 USC §45(a)] (see section 1301(a) of the Act). Additionally, the credit period is extended to 10 years for facilities placed in service after August 8, 2005 [26 USC §45(b)(4)(B)(iii)] (see section 1301(b) of the Act). The length of time the credit can be claimed depends on when the facility is placed in service. For landfill gas facilities placed into service:

- After October 22, 2004 (the date of enactment of the American Jobs Creation Act) and before August 8, 2005 (the date of enactment of the Energy Policy Act), the credit period is five years.
- After August 8, 2005 and before January 1, 2008, the credit period is 10 years.

Generally, the "placed-in-service" requirement has been interpreted to mean that the facility has generators installed and working or in a condition that is ready to generate electricity. The credit, however, can be claimed only when electricity is produced and sold, and only for the specified credit period after the facility is placed in service.

This credit is eliminated if the facility produces electricity from landfill gas and has already received a credit under section 29 for the taxable year or for any prior taxable year [26 USC §45(e)(9)] (see section 1301(f) of the Act). Many unanswered questions remain as to how this section will be interpreted.

Revision: Credit for Producing Fuel from a Nonconventional Source

The Energy Policy Act of 2005 Act redesignates section 29 as new section 45K (see section 1322(a)(1) of the Act).

The 2005 Act makes this credit part of the general business credit under section 38 of the Internal Revenue Code [26 USC §38(a)(22)] (see section 1322(a)(2) of the Act). By making the old section 29 credit part of the general business credit, taxpayers will now combine the nonconventional source fuel credit with other general business credits. Credit amounts that exceed the taxpayer's tax liability can now be carried back one tax year or forward 20 tax years [26 USC §39(a)] on the federal tax return.

Clean Renewable Energy Bonds

The Act creates Clean Renewable Energy Bonds (see section 1303 of the Act) by adding section 54 to the tax code (26 USC). Essentially, the owners of the bond receive federal tax credits instead of tax-free interest payments from the bond issuer. The bonds can be issued no earlier than December 31, 2005 and no later than December 31, 2007. At least 95 percent of the bond proceeds must be spent on one or more eligible projects within five years of the date of issue. There is a national limitation of $800 million that can be allocated for these bonds.

Renewable Energy Production Incentive

The 2005 Act includes use of landfill gas for electricity production [42 USC §13317(b)] (see section 202(b)(2) of the Act). The Act extends the eligibility period to October 1, 2016 [42 USC §13317(c)] (see section 202(c) of the Act), which means a facility generating electricity from landfill gas:

- Must be operational by October 1, 2016.
- Can receive payments for the first 10 years of operation, until 2026, if federal funds are available.

Appropriations are extended for fiscal years 2006 through 2026 [42 USC §13317(g)] (see section 202(g) of the Act), although no annual amount is set forth in the Act. If appropriated funds are insufficient to make full payments, 60 percent of funds will be assigned to facilities that use solar, wind, ocean, geothermal, or closed-loop biomass technologies, and the remaining 40 percent will be assigned to other projects, including those that use landfill gas [42 USC §13317(a)(4)] (see section 202(a)(4) of the Act).

Federal Purchase Requirement

Section 203 of the Act establishes a federal purchase requirement for renewable energy. To the extent economically feasible and technically practicable, the total quantity of electric energy the federal government consumes during any fiscal year must be renewable energy, according to the schedule below:

- At least 3 percent in 2007-2009
- At least 5 percent in 2010-2012
- At least 7.5 percent in 2013 and after

Under this requirement, renewable energy includes electricity generated from landfill gas.

Rural and Remote Communities Electrification Grants

Section 209 of the Act establishes grants for the purposes of:

- Increasing energy efficiency, siting, or upgrading transmission and distribution lines serving rural areas; or
- Providing or moderninzing electric generation facilities that serve rural areas.

The grants are available to local governments; peoples' utility districts; irrigation districts; and cooperative, nonprofit, or limited-dividend associations in rural areas (i.e., population of not more than 10,000 inhabitants). Renewable energy facilities, including facilities generating electricity from landfill gas, are to be given preference in making grants. For each fiscal year beginning in 2006 through 2012, $20 million has been appropriated for these grants.

Loan Guarantees

Section 1701 of the Act authorizes loan guarantees for up to 80 percent of the project cost of an eligible project. Eligible projects include projects that both reduce greenhouse gas emissions and employ significantly improved technologies. Additionally, projects must fall into one of 10 broad categories, one of which is renewable energy systems.